

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA,  Plaintiff,  v.  KIMBERLEE PITAWANAKWAT,  Defendant.	5:20-CR-50122  <b>DEFENDANT'S MOTION TO SEVER</b>
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COMES NOW Defendant, Kimberlee Pitawanakwat, by and through her Counsel, Jonathan P. McCoy of Costello, Porter, Hill, Heisterkamp, Bushnell & Carpenter, LLP, and moves this Court, pursuant to Rule 14 of the Federal Rules of Criminal Procedure, to sever her trial from that of George Dull Knife.

Pitawanakwat contends that she would be prejudiced by trial with Dull Knife, because of the "spill-over" effect from evidence to be admitted against Dull Knife, which the Government has conceded is not relevant to the charges brought against her (*see, Exhibit 1 to Memo. In Sup't of Mot. to Sever*). This is especially true where the two defendants are intimate partners and have a child together. Such a "spill over" is widely recognized both as to offenses and defendants. Invariably, the evidence against separate defendants will have a different probative value as to each individual defendant.

This motion is further supported by a Memorandum in Support of Motion to Sever, filed contemporaneously herewith.

WHEREFORE Defendant requests this Court for its Order granting the severance of the parties and counts for trial or, in the alternative, that a hearing be scheduled for the parties to be heard.

Dated this 7<sup>th</sup> day of December 2021.

**COSTELLO, PORTER, HILL, HEISTERKAMP,  
BUSHNELL & CARPENTER, LLP**

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